

Message Text

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E.O. 11652: N/A
TAGS: BENC, KU
SUBJECT: GENERAL ELECTRIC INTEREST IN DOHA WEST POWER
PROJECT

REF: STATE 165298

1. WE WERE A BIT CONFUSED BY REFTTEL, SINCE WE KNOW NOTHING OF "SWCC DESALINATION PROGRAMS" OTHER THAN SWCC APPARENTLY STANDS FOR SALINE WATER CONVERSION CORP. ON THE CHANCE THAT GE IS CONCERNED ABOUT "OPEN ENDED LIABILITY" IN KUWAIT AS WELL AS SAUDI ARABIA, WE CHECKED WITH RESPECTED LOCAL LAWYER, WHO HAS BEEN INVOLVED IN LIABILITY/CONTRACT/TENDER MATTERS IN KUWAIT FOR OVER 20 YEARS. HE PROVIDED US WITH THE FOLLOWING, WHICH WE HAVE NO REASON TO DOUBT IS ACCURATE REFLECTION OF SITUATION IN KUWAIT.

2. ARTICLE 146 OF KUWAIT LAW RELATING TO DAMAGES DEFINES DAMAGES TO INCLUDE "ACTUAL EXPENSES AS WELL AS LOST PROFITS ARISING DIRECTLY FROM THE BREACH". THE KEY WORD IS "DIRECTLY" SINCE REMOTE DAMAGES (I.E. "SPECULATIVE DAMAGES") ARE NOT ALLOWED. IN THE CASE OF DOHA WEST, ATTORNEY CONSIDERS LOSSES SUFFERED BY CONSUMERS OF ELECTRICITY
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DUE TO DELAY OF PLANT COMING ONSTREAM AS POTENTIAL CLAIMS BY THE GOVERNMENT, BUT ONLY TO BE USED AS A BARGAINING CHIP TO ASSURE ON TIME COMPLETION. SUCH CLAIMS COULD BE "CUT OFF" BY CONCEPT OF "REMOTE DAMAGES" CONTAINED IN KUWAIT LAW.

3. KUWAITIS ARE NOT LIKELY TO RAISE ISSUE OF CONSEQUENTIAL

DAMAGES FOR MINOR DELAYS IN COMPLETION. IN CASE OF MAJOR DELAYS KUWAITIS HAVE SHOWN THEMSELVES SYMPATHETIC TO DILIGENT CONTRACTORS THAT MAINTAIN GOOD RELATIONS DURING THE COURSE OF THE CONTRACT.

4. RE SUGGESTION PARA 2 REFTTEL, NEITHER WE NOR SENIOR ATTORNEY CAN RECALL USE OF NONBINDING ARBITRATION TO FIX DAMAGES IN A KUWAITI PROJECT. HOWEVER, SUCH A POSSIBILITY COULD BE RAISED AT NEGOTIATION OF CONTRACT LANGUAGE IF THOUGHT DESIRABLE.

5. COMMENT: WE WERE UNDER IMPRESSION GE DECIDED TO BID DOHA WEST AND WAS PREPARING TO SUBMIT TENDER DOCUMENTS. WE HOPE QUESTION OF LIABILITY WILL NOT DISCOURAGE GE FROM BIDDING. GOK, WITH OVER \$30 BILLION IN FOREIGN ASSETS, HAS NO INTEREST IN EITHER WINNING OR ENGAGING IN LEGAL SUITS. IT WANTS COMPLETED, FUNCTIONING FACILITIES, AND WILL COOPERATE WITH CONTRACTORS TO ACHIEVE THIS END.
SUTHERLAND

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